



## **FEDERAL TRADE COMMISSION**

### **Agency Information Collection Activities; Proposed Collection; Comment Request**

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (“PRA”), the Federal Trade Commission (“FTC” or “Commission”) is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget clearance for information collection requirements in the Children’s Online Privacy Protection Act Rule (“COPPA Rule” or “Rule”). The current clearance expires on March 31, 2022.

**DATES:** Comments must be filed by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

**INFORMATION** section below. Write “COPPA Rule: Paperwork Comment, FTC File No. P155408” on your comment and file your comment online at

<https://www.regulations.gov>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address:

Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the

following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Peder Magee, Attorney, (202) 326-3538, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

## **SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Children's Online Privacy Protection Act Rule, 16 CFR part 312.

*OMB Control Number:* 3084-0117.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Private Sector: Businesses and other for-profit entities.

*Estimated Annual Burden Hours:* 17,700.

*Estimated Annual Labor Costs:* \$5,783,700.

*Estimated Annual Non-Labor Costs:* \$0.

*Abstract:* The COPPA Rule requires commercial websites and online services to provide notice and obtain parental consent before collecting, using, or disclosing personal information from children under age thirteen, with limited exceptions. The COPPA Rule contains certain statutorily required notice, consent, and other requirements that apply to operators of any commercial website or online service directed to children that collect personal information, and operators of any commercial website or online service with actual knowledge that it is collecting personal information from children. The Rule also applies to operators that collect personal information from users of another website or online service that is directed to children. Covered operators must, among other things: provide online notice and direct notice to parents of how they collect, use, and disclose children's personal information; obtain the prior consent of the child's parent in order to engage in such collection, use, and disclosure; provide reasonable means for the parent to obtain access to the information and to direct its deletion; and, establish procedures that protect the confidentiality, security, and integrity of personal information collected from children.

### *Burden Statement:*

1. Annual hours burden: 17,600 hours
  - (a) New entrant operators' disclosure burden

Based on public comments received by the Commission during its 2013 COPPA Rule amendments rulemaking,<sup>1</sup> FTC staff estimates that the Rule affects approximately 280 new operators per year.<sup>2</sup> Staff maintains its longstanding estimate that new operators of websites and online services will require, on average, approximately 60 hours to draft a privacy policy, design mechanisms to provide the required online privacy notice and, where applicable, the direct notice to parents.<sup>3</sup> This yields an estimated annual hours burden of 16,800 hours (280 respondents × 60 hours).

(b) Safe harbor applicant reporting requirements

Operators can comply with the COPPA Rule by meeting the terms of Commission-approved self-regulatory program guidelines.<sup>4</sup> While the submission of industry self-regulatory guidelines to the agency is voluntary, the COPPA Rule sets out the criteria for approval of guidelines and the materials that must be submitted as part of an application for approval of such self-regulatory guidelines. Based on industry input, staff estimates that it would require, on average, 265 hours per new safe harbor program applicant to prepare and submit its safe harbor proposal in accordance with Section 312.11(c) of the Rule.<sup>5</sup> Given that several safe harbor programs are already available to operators of websites and online services, FTC staff anticipates that no more than one additional safe harbor applicant is likely to submit a request within the next three years of PRA clearance. Thus, FTC staff estimates that annualized burden attributable to this

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<sup>1</sup> 78 FR 3971, 4005 (Jan. 17, 2013).

<sup>2</sup> This consists of certain traditional website operators, mobile app developers, plug-in developers, and advertising networks.

<sup>3</sup> See, e.g., 80 FR 76491 (Dec. 9, 2015); 84 FR 1466 (Feb. 4, 2019).

<sup>4</sup> See 16 CFR 312.11(c). Approved self-regulatory guidelines can be found on the FTC's website at [http://www.ftc.gov/privacy/privacyinitiatives/childrens\\_shp.html](http://www.ftc.gov/privacy/privacyinitiatives/childrens_shp.html).

<sup>5</sup> See 83 FR 49557 (Oct. 2, 2018). Staff believes that most of the records submitted with a safe harbor request would be those that these entities have kept in the ordinary course of business. Under 5 CFR 1320.3(b)(2), OMB excludes from the definition of PRA burden the time and financial resources needed to comply with agency-imposed recordkeeping, disclosure, or reporting requirements that customarily would be undertaken independently in the normal course of business.

requirement would be approximately 88 hours per year (265 hours ÷ 3 years), which is rounded to 100 hours.

(c) Annual audit and report for safe harbor programs

The COPPA Rule requires safe harbor programs to audit their members and submit annual reports to the Commission on the aggregate results of these member audits. The burden for conducting member audits and preparing these reports likely varies by safe harbor program depending on the number of members. Commission staff estimates that conducting audits and preparing reports will require approximately 100 hours per program per year. Aggregated for one new safe harbor (100 hours) and six existing (600 hours) safe harbor programs, this amounts to an estimated cumulative reporting burden of 700 hours per year (7 respondents × 100 hours).

(d) Safe harbor program recordkeeping requirements

FTC staff understands that most of the records listed in the COPPA Rule's safe harbor recordkeeping provisions consist of documentation that covered entities retain in the ordinary course of business irrespective of the COPPA Rule. As noted above, OMB excludes from the definition of PRA burden, among other things, recordkeeping requirements that customarily would be undertaken independently in the normal course of business. In staff's view, any incremental burden, such as that for maintaining the results of independent assessments under section 312.11(d), would be marginal.

2. Estimated annual labor costs: \$5,783,700

(a) New entrant operators' disclosure burden

Consistent with its past estimates and based on its 2013 rulemaking record, FTC staff assumes that the time spent on compliance for new operators covered by the COPPA Rule would be apportioned five to one between legal (outside counsel lawyers or similar professionals) and technical (e.g., computer programmers, software developers, and information security analysts) personnel. Staff therefore estimates that outside counsel

costs will account for 14,000 of the estimated 16,800 hours required as estimated in Section 1(a) above. Staff anticipates that the workload among law firm partners and associates for assisting with COPPA compliance would be distributed among attorneys at varying levels of seniority. Assuming two-thirds of such work is done by junior associates at a rate of approximately \$300 per hour, and one-third by senior partners at approximately \$600 per hour, the weighted average of outside counsel costs would be approximately \$400 per hour.<sup>6</sup> FTC staff anticipates that computer programmers responsible for posting privacy policies and implementing direct notices and parental consent mechanisms would account for the remaining 2,800 hours. FTC staff estimates an hourly wage of \$49 (rounded to the nearest dollar) for technical assistance, based on Bureau of Labor Statistics (“BLS”) data.<sup>7</sup> Accordingly, associated annual labor costs would be \$5,737,200  $[(14,000 \text{ hours} \times \$400/\text{hour}) + (2,800 \text{ hours} \times \$49/\text{hour})]$  for the estimated 280 new operators.

(b) Safe harbor applicant reporting requirements

Previously, industry sources have advised that all of the labor to comply with new safe harbor applicant requirements would be attributable to the efforts of in-house lawyers. *See* 83 FR at 49558. To determine in-house legal costs, FTC staff applied an approximate average between the BLS reported mean hourly wage for lawyers (\$69.86),<sup>8</sup>

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<sup>6</sup> These estimates are drawn from the “Laffey Matrix.” The Laffey Matrix is a fee schedule used by many United States courts for determining the reasonable hourly rates in the District of Columbia for attorneys’ fee awards under federal fee-shifting statutes. It is used here as a proxy for market rates for litigation counsel in the Washington, DC area. For 2020-2021, rates in table range from \$333 per hour for most junior associates to \$665 per hour for the most senior partners. *See* Laffey Matrix, Civil Division of the United States Attorney’s Office for the District of Columbia, United States Attorney’s Office, District of Columbia, Laffey Matrix B 2015-2021, *available at* <https://www.justice.gov/usao-dc/page/file/1305941/download>.

<sup>7</sup> The estimated mean hourly wages for technical labor support (\$44) is based on an average of the mean hourly wage for computer programmers, software developers, information security analysts, and web developers as reported by the Bureau of Labor statistics. *See Occupational Employment and Wages – May 2019*, Table 1 (National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2019), *available at* <https://www.bls.gov/news.release/ocwage.t01.htm> (hereinafter, “BLS Table 1”).

<sup>8</sup> *See* BLS Table 1 (attorneys).

and estimated in-house hourly attorney rates (\$300) that are likely to reflect the costs associated with some safe harbor applicant costs. This yields an approximate hourly rate of \$185. Applying this hourly labor cost estimate to the hours burden associated with approval for a new safe harbor application yields an estimated annual labor cost burden of \$18,500 (100 hours × \$185).

(c) Annual audit and report for safe harbor programs

Commission staff assumes that compliance officers, at a mean hourly wage of \$35, will prepare annual reports.<sup>9</sup> Applying this hourly labor cost estimate to the hours burden associated with preparing annual audit reports yields an estimated annual labor cost burden of \$24,500 (700 hours × \$35).

(d) Safe harbor program recordkeeping requirements

For the reasons stated in Section 1(d) above, FTC staff anticipates that the labor costs associated with safe harbor program recordkeeping are *de minimis*.

3. Estimated annual non-labor costs: \$0

FTC staff understands that covered operators already have in place the computer equipment and software necessary to comply with the Rule's notice requirements. Accordingly, the predominant costs incurred by operators are the aforementioned labor costs. Similarly, FTC staff anticipates that covered entities already have in place the means to retain and store the records that must be kept under the Rule's safe harbor recordkeeping provisions, because they are likely to retain such records independent of the Rule. Accordingly, FTC staff estimates that the capital and non-labor costs associated with Rule compliance are *de minimis*.

*Request for Comments:*

Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of

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<sup>9</sup> See BLS Table 1 (compliance officers, \$35.03).

information” means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the COPPA Rule.

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of providing the required information to consumers. All comments should be filed as prescribed in the ADDRESSES section above, and must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Paperwork Reduction Act: FTC File No. P072108” on your comment. Your comment, including your name and your state – will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

Due to the public health emergency in response to the COVID-19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you prefer to file your comment on paper, write “Paperwork Reduction Act: FTC File No. P072108” on your comment and on the envelope, and mail your comment

to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential" – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General



Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

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